Lian Lee Motor Sdn Bhd v Azizuddin bin Khairuddin

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO 1–11–131 OF 1999
KC VOHRAH J
4 DECEMBER 2000

Sale of Goods *— Motor car — Sale of car to plaintiff by purported registered owner — Registration card of car forged — Whether there is an implied condition on the defendant that he had the right to sell — Plaintiff claim for money had or received by the defendant — Whether there is total lost of consideration — Sale of Goods Act 1957 s 14(a)*

In order to buy a Proton Saga from the plaintiff, the defendant sold a car, a Toyota Corolla ('the said Toyota'), purportedly registered with the JPJ Pahang, to the plaintiff. The proceeds of that sale was used to purchase the Proton Saga on the same date. The said Toyota was later seized by the police. It was found to be a stolen car, with its registration card having been forged. The plaintiff sued the defendant for the refund, being the money had and received by the defendant as consideration for the said Toyota.

Held, reversing the earlier judgment with costs:

(1) When the defendant sold the said Toyota to the plaintiff, there was an implied condition on his part, under s 14(a) of the Sale of Goods Act 1957, that he had a right to sell the said Toyota. But there was a total failure of consideration; the plaintiff had paid the purchase price in order that he might get the said Toyota and he has not got it. The defendant did not have the right of possesion to the said Toyota and could not consequently give it to the plaintiff. The plaintiff has a right to sue for the price paid as money had and received on a total failure of the consideration (see p 337D).

(2) The magistrate was wrong in law in deciding that the plaintiff had no right to claim for the refund on the ground that the defendant had a good title to the said Toyota and that the plaintiff had failed to show that the defendant had acquired the title of the vehicle illegally or without proper inquiry or that he was not a purchaser in good faith (see p 337H–I).

[**Bahasa Malaysia summary**

Bagi tujuan membeli sebuah Proton Saga daripada plaintif, defendan telah menjual sebuah kereta, Toyota Corolla ('Toyota tersebut'), yang didaftarkan di JPJ Pahang, kepada plaintif. Hasil jualan tersebut telah digunakan untuk membeli Proton Saga tersebut pada hari yang sama. Toyota tersebut telah disita kemudiannya oleh polis. Adalah didapati bahawa ia adalah sebuah kereta curi, dengan kad pendaftarannya yang telah dipalsukan. Plaintif telah menyaman defendan untuk mendapatkan bayaran balik, yang merupakan wang yang telah diterima oleh defendan sebagai balasan Toyota tersebut.

Diputuskan, mengakaskan penghakiman awal tersebut dengan kos:

(1) Apabila defendan menjual Toyota tersebut kepada plaintif, terdapat syarat tersirat di pihak beliau, di bawah s 14(a) Akta Jualan Barangan 1957, bahawa beliau mempunyai hak untuk menjual Toyota tersebut. Namun begitu terdapat kegagalan mutlak terhadap balasan; plaintif telah membayar harga jualan bagi tujuan beliau mungkin dapat memiliki Toyota tersebut tetapi beliau tidak dapat mendapatkannya. Defendan tidak mempunyai hak milikan ke atas Toyota tersebut dan selanjutnya tidak dapat menyerahkannya kepada plaintif. Plaintif mempunyai hak untuk menyaman bagi harga yang telah dibayar sebagai wang yang telah diterima atas kegagalan mutlak terhadap balasan tersebut (lihat ms 337D).

(2) Majistret telah khilaf dalam undang-undang dalam memutuskan bahawa palintif tidak mempunyai hak untuk mendapat bayaran balik atas alasan bahawa defendan mempunyai hak milik ke atas Toyota tersebut dan bahawa plaintif telah gagal untuk menunjukkan bahawa defendan telah memdapatkan hak milik kenderaan tersebut secara tidak sah atau tanpa penyelidikan yang betul atau bahawa beliau bukan pembeli yang suci hati (lihat ms 337H–I).]

Notes

For cases on sale of motor car, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 694–700.

Cases referred to

Rowland v Divall (1923) 2 KB 500 (refd)
Soon Teck Finance (M) Bhd v Public Finance Bhd [1988] 3 MLJ 417 (refd)

Legislation referred to

Sale of Goods Act 1893 s 12 [Eng]
Sale of Goods Act 1957 ss 4(1), 14(a), 29

LK Cheah (*Lee & Wong*) for the appellant.
Preetam Kaur (*Rithauddin & Azlin*) for the respondent.

KC Vohrah J:

Decision

The defendant wanted to buy a Proton Saga from the plaintiff. What he did on 29 May 1989 was sell a car, a Toyota Corolla ('the said Toyota'), bearing registration number CR 9806, purportedly registered with the JPJ Pahang, to the plaintiff and he used almost the whole bulk of whatever he received

from the sale of that car to purchase the Proton Saga from the plaintiff on the same date.

The said Toyota was seized by the police some six months later, on 18 January 1990. It was not disputed that the car that the defendant sold to the plaintiff was a stolen car and that the registration card in respect of the car was a forgery. Neither was it disputed that the plaintiff or the defendant had not known that the car was stolen.

The plaintiff sued for the refund of RM18,728.45 being the money had and received by the defendant as consideration for the said Toyota.

The defendant resisted the claim on the ground that the defendant, when he originally bought the said Toyota from a third party, was not aware that it was a stolen car. He had been a bona fide purchaser of the said car with no knowledge whatsoever of defects' relating to the ownership of the car and he had acquired a good title in the car under s 29 of the Sale of Goods Act 1957 ('the Act'). The defendant also relied on *Soon Teck Finance (M) Bhd v Public Finance Bhd* [1988] 3 MLJ 417 for the proposition that the defendant had a better title. With respect the case of *Soon Teck Finance* does not apply in this case as the plaintiff is relying on s 14(a) of the Act.

Before I go to s 14(a) of the Act, I would like to point out s 4(1) of the Act which states that a 'contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.' The transfer of property as stated in the provision constitutes the essence of a contract of sale and the seller who does not so transfer the property breaks the basic duty created by the contract and there is a total failure of consideration. I now turn to s 14(a) of the Act.

Section 14(a) reads as follows:

> 14 In a contract of sale, unless the circumstances of the sale of the contract are such as to show a different intention there is:
>
> (a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods, and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;
>
> (b) …
>
> (c) …

Section 14(a) of the Act is equivalent to s 12 of the English Sale of Goods Act 1893 ('the English Act'). In the English Court of Appeal case of *Rowland v Divall* (1923) 2 KB 500 at p 505, Scrutton LJ had this to say about s 12 of the English Act:

> Section 12 says in express terms that there shall be 'An implied condition on the part of the seller that … he has a right to sell the goods.' It now being a condition, wherever that condition is broken the contract can be rescinded, and with the rescission the buyer can demand a return of the purchase money, unless he has, with knowledge of the fact, held on to the bargain so as to waive the condition.

In that case, the plaintiff bought a motor car from the defendant and used it for several months. It appeared that the car had been stolen before the

defendant became possessed of it, and therefore he had no title to it. The plaintiff was compelled to surrender it to the true owner. The plaintiff sued the defendant to recover the purchase money that he had paid, as on a total failure of consideration.

It was held by the Court of Appeal that notwithstanding that he had the use of the car, the consideration had totally failed, and he was entitled to get the purchase money back.

Atkins LJ had this to say at pp 506–507:

> '... there can be no sale at all of goods which the seller has no right to sell. The whole object of a sale is to transfer property from one person to another …
> …
> … In fact the buyer has not received any part of that which he contracted to receive — namely the property and right to possession — and that being so, there has been a total failure of consideration …'

Now, when, in our case, the defendant sold the said Toyota to the plaintiff, there was an implied condition on his part, under s 14(a) of the Act, that he had a right to sell the said Toyota. But there was a total failure of consideration; the plaintiff had paid the purchase price in order that he might get the car and he has not got it. The defendant did not have the right of possession to the said Toyota and could not consequently give it to the plaintiff. The plaintiff has a right to sue for the price paid as money had and received on a total failure of the consideration.

We now come to the second issue: what was the price paid for the Toyota? That would be the amount that has to be refunded.

Amongst the documents in the agreed bundle of documents is the 'purchase invoice' where the defendant had acknowledged that the agreed purchase price of the said Toyota was RM18,727.75, and that he had received the sum of RM12,127.65 and that the balance of RM6,601 was to be paid to Maybank Finance Bhd. (The evidence was that the RM6,601 was to be paid, and in fact was paid to Maybank Finance Bhd in order to obtain a letter of release from Maybank Finance Bhd where the defendant had obtained financing to purchase the said Toyota. The letter of release enabled the defendant to sell the said Toyota to the plaintiff). The purchase invoice has both the signatures of the defendant and the plaintiff's representative.

The evidence shows how the money for the purchase price was applied — as a deposit for the purchase of the Proton car, payment for insurance for the Proton Saga, payment to Maybank Finance Bhd for the letter of release on the Toyota and payment of the balance sum to the defendant in cash. What matters is that the price for the said Toyota was RM18,728.75, and that is what the plaintiff has claimed as a refund.

The magistrate was wrong in law in deciding that the plaintiff had no right to claim for the refund on the ground that the defendant had a good title to the car and that the plaintiff had failed to show that the defendant had acquired the title of the vehicle illegally or without proper inquiry or that he was not a purchaser in good faith.

The judgment of the magistrate is reversed and judgment will be entered for the plaintiff in terms of the statement of claim, paras (a) and (b). Costs here and below.

Judgment reversed with costs.

Reported by Wong Ee Lynn